

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

VICTOR BAILEY,
Plaintiff,
vs.

**P. W. ANNETTS, Superintendent
of Wallkill Correctional Facility,
Defendants,**

9:2003-CR-001334(NPM/DRH)

Of Counsel:

APPEARANCES:

VICTOR BAILEY
Petitioner Pro Se
98-A-1668
Wallkill Correctional
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NEAL P. McCURN, Sr. J.

ORDER ADOPTING REPORT AND RECOMMENDATION

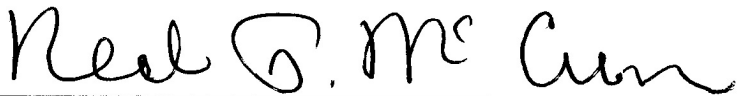
Presently before this Court is the Report and Recommendation of the Hon. David R. Homer, USMJ, dated December 29, 2006, ruling on petitioner's writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the grounds that 1) he was denied the effective assistance of trial counsel, 2) the prosecutor engaged in misconduct, 3) there was insufficient evidence to support his conviction, 4) he received a harsh and excessive sentence, and 5) the trial judge was biased. (Dkt.25) In this extensive and well reasoned report Magistrate Judge Homer recommends that the petition be denied.

Pursuant to 28 U.S.C. § 636(b)(1), petitioner had ten days to file objections to the instant Report and Recommendation, which was filed and served upon petitioner and defense counsel on December 29, 2006. The Court allowed 18 days from the filing of the Report and Recommendation to January 16, 2007 for the petitioner to file objections, and although the time to object has expired, no objections have been received by this Court or Magistrate Judge Homer. Further, on January 8, 2007 the copy of the Report and Recommendation mailed the petitioner was returned to the Court undeliverable at petitioner's Wallkill Correctional Facility address (Dkt.26) and marked "inmate released 4/25/2005".

Therefore, the court having satisfied that there is no clear error on the

face of the record, adopts in its entirety the Report and Recommendation of the Hon. David R. Homer, USMJ, dated December 29, 2006, and orders that the petition be denied and the action be dismissed in its entirety.

IT IS SO ORDERED
Dated: March 19, 2007
Syracuse, New York



Neal P. McCurn
Senior U.S. District Judge